court construed a similar enactment in the opposite and the correct way. *People* v. *Cannon*, 139 N. Y. 32. Unhappily this decision was not brought to the attention of the court in the principal case.

CONTRACTS FOR THE ALLOTMENT OF SHARES. — Many of the more important of the English cases, which established that a contract by mail is complete on the mailing of the letter of acceptance, were contracts for the allotment of shares. These were always treated by the courts as if they were bilateral contracts. *Household Fire Insurance Co.* v. *Grant*, 4 Ex. D. 216. Yet in none of them was the court expressly called upon to decide whether the contract was bilateral or unilateral. This point would seem to be directly involved in a recent case, — *Re London and Northern Bank Limited*, 81 L. T. Rep. 512. A letter withdrawing an application for an allotment of shares in a stock company was received by the company after the directors had alloted the shares, but before the notice of allotment was mailed. The applicant was held to be entitled to have his name removed from the register of shareholders, and to have his deposit returned.

Though the court follow the previous *dicta*, it would have carried out more nearly the actual intention of the parties had it held an allotment of shares to be a unilateral contract complete on the allotment, and subject only to a defeasance in case of laches in not sending the notice of allotment within a reasonable time. Langdell, Summary of the Law of Contracts, § 6. In holding this a bilateral contract, the court would seem to encounter the difficulty of being obliged to hold that the directors could cancel the allotment at any time before the mailing of the notice of allotment. Yet, if that precise case had been presented, it is difficult to believe that the contract would not have been held complete from the time of the allotment, as it was the evident understanding of the parties that the applicant's title to the shares should date from then. Everything that the company was asked to do was already done before the sending of the notice of allotment. How, then, could the sending of this notice be essential to the existence of a contract? And what did the company bind itself by this contract to do? Certainly not to allot the shares. That had already been done. The true view is that the contract is unilateral, and the applicant shows by his language and the nature of the transaction that notice of acceptance is not required, — merely notice of performance. After performance revocation is of course too late. *Carlill* v. *Carbolic Smoke Ball Co.* [1893] 1 Q. B. 262. The point that the contract was unilateral, however, was not taken by counsel, and, considering the number of times the contrary doctrine has been reiterated, this is not surprising.

OTHER FIRES BY OTHER ENGINES. — In actions against a railroad for damage caused by fire negligently allowed to escape from a locomotive, the courts are not fully agreed as to how far evidence is admissible that other locomotives of the defendant have also emitted sparks and caused fires. Where the particular locomotive which is alleged to have set the fire is unidentified, such evidence is almost always allowed either to establish the negligent construction of the defendant's engines generally, or to show a capacity to emit sparks, and thus that the injury

might have been caused in this way. 1 Greenleaf on Evidence, 85, 16th ed. The dispute arises in regard to the admission of this sort of evidence when the particular one which is claimed to have caused the injury is identified. In some jurisdictions such evidence is admitted as showing a possible cause of the damage. *Sheldon* v. *The Hudson River R. R. Co.*, 14 N. Y. 218. Other courts lay down the rule that it has not any logical bearing upon the issue. *Gibbons* v. *Wisconsin Valley R. R. Co.*, 58 Wis. 335. This view has recently received the sanction of the Court of Appeals of Indian Territory, on the ground that, if a defendant is to be held liable for fire set by a particular locomotive, it must be for negligence, not in the operation of defective locomotives generally, but in operating that particular one. *Missouri K. & T. Ry. Co.* v. *Wilder*, 53 S. W. Rep. 490 (Ind. Ter.).

In a great variety of cases, where the means of proof are necessarily indirect, courts frequently admit as evidence matters of slight weight, simply because nothing better can be had. On this ground rests the admission of evidence of the dangerous character of the defendant's engines generally. Nor does the competency of such evidence depend upon the question whether or not the particular machine which caused the injury be known or not. It would seem to be relevant in either case. After other probable causes have been disproved, evidence that engines used by the company do in fact emit sparks tends to show that the injury complained of might well have arisen from the escape of fire from this particular engine. It is of course open to the defendant to show that any identified engine could not have caused the injury. The Indian Territory case is right in condemning the admission of such evidence to show habitual negligence on the part of the railroad, — although some courts seem to grant its competency for that purpose, *Koontz* v. *O. R. & N. Co.*, 2 Oreg. 3, — for from that it does not follow that there was negligence in this particular instance. It is in the nature of character evidence, and should not be admitted in civil actions. 12 HARVARD LAW REVIEW, 500. This evidence would seem clearly competent, however, on the grounds indicated above.

SECRET TRUSTS UPON BEQUESTS. — In disregard of the prohibition by the Statute of Frauds of any oral addition to testamentary documents, courts of equity generally enforce oral trusts intended by the testator to be attached to devises and bequests when communicated to the apparent beneficiary before the testator's death. *Brooks* v. *Chappell*, 34 Wis. 405. These seem, however, to be enforced as testamentary declarations. In fact, they cannot be treated as express trusts, for the duty does not come into existence at the time of the communication, but only on the death of the testator. The true explanation is, perhaps, that a constructive trust in favor of the intended beneficiary is imposed to enforce specific performance of a contract made by the apparent beneficiary with the testator. *McClellan* v. *McLean*, 2 Head, 684. Where the legatee expressly assents to the arrangement, it is very easy to work out a unilateral contract, in which the consideration for the promise is the bequest; but it is doubtless an unusual stretching of the principles of contract to find a promise in a mere absence of dissent. However this may be, many courts treat these as cases of constructive fraud simply. But whatever name be given to the reason for reaching this result, it seems that the